

INSPECTIONS DIVISION

CHAPTER 30
FOOD AND CONSUMER SAFETY

481—30.1(10A) Inspections division's food and consumer safety bureau. The inspections division's food and consumer safety bureau inspects egg handlers, food establishments (retail), food processing establishments (wholesale), food and beverage vending machines, hotels, and food service operations in schools, correctional and penal institutions.

481—30.2(10A) Definitions.

"Baked goods" means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

"Bed and breakfast home" means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home, but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

"Bed and breakfast inn" means a hotel which has nine or fewer guest rooms.

"Boarder" means a person who rents a room, rooms or apartment for at least a week. A boarder is considered permanent and is not a transient guest.

"Boarding house" means a house in which lodging is rented and meals are served to permanent guests. A boarding house is not a food service establishment or hotel unless it rents or caters to transient guests.

"Commissary" means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment's own outlets.

"Contractor" means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C, 137D or 137F.

"Criminal offense" means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

"Department" means the department of inspections and appeals.

"Egg handler" or *"handler"* means any person who engages in any business in commerce which involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food. An egg handler does not include a food establishment or home food establishment if either establishment obtains eggs from a licensed egg handler or supplier which meets standards referred to in rule 481—31.2(137F). Producers who sell eggs produced exclusively from their own flocks directly to egg handlers or to consumer customers are exempt from regulation as egg handlers.

"Farmers market" means a marketplace which operates seasonally as a common market for fresh fruits and vegetables on a retail basis for consumption elsewhere. A person who sells potentially hazardous food (food that is capable of supporting the rapid and progressive growth of toxins) at a farmers market must obtain a license for each county in which the person operates. A license is not required to sell wholesome, fresh shell eggs to consumer customers.

“Farmers market potentially hazardous food license” means a license for a temporary food establishment that sells potentially hazardous foods at farmers markets. A separate seasonal farmers market potentially hazardous food license is required for each county in which the licensee sells potentially hazardous foods at farmers markets. The license is only applicable at farmers markets, and is not required to sell wholesome, fresh shell eggs to consumer customers.

“Food establishment” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school or the Iowa juvenile home. “Food establishment” does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not potentially hazardous.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market.
6. Premises of a residence in which food that is not potentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food.
7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
8. A private home that receives catered or home-delivered food.
9. Child day care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.
10. Supply vehicles, vending machine locations or boarding houses for permanent guests.
11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.
12. Premises covered by a current Class “A” beer permit as provided in Iowa Code chapter 123.
13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.
14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler’s license.
15. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.

“Food processing plant” means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. “Food processing plant” does not include any of the following:

1. A premises covered by a Class “A” beer permit as provided in Iowa Code chapter 123.
2. A premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.

“Food service establishment” means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or subject to Iowa sales tax as provided in Iowa Code section 422.45.

“Home food establishment” means a business on the premises of a residence where potentially hazardous bakery goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed \$20,000. This term does not include a residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations. Residences which prepare or distribute honey, shell eggs or nonhazardous baked goods are not required to be licensed as home food establishments. Home food establishments with annual gross sales of \$1,000 or less in sales of potentially hazardous bakery products are exempt from licensing under Iowa Code section 137D.2, if the food is labeled and the label states that the food comes from a kitchen not under state inspection or licensure and that labeling complies with rule 481—34.3(137D).

“Hotel” means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests.

“License holder” means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C, 137D or 137F.

“Mobile food unit” means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

“Panned candies” are those with a fine hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

“Potentially hazardous food” means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum. “Potentially hazardous food” includes an animal food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. “Potentially hazardous food” does not include the following:

1. An air-cooled hard-boiled egg with shell intact.
2. A food with a water activity value of 0.85 or less.
3. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees Centigrade or 75 degrees Fahrenheit.
4. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

“Pushcart” means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

“Retail food establishment” means a food establishment that sells food or food products to consumer customers intended for preparation or consumption off the premises.

“Revoke” means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C, 137D or 137F. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.

“Salvage food” means food from truck wrecks, fires, tornadoes or other disasters which involve food products.

“Suspend” means to render a license issued under Iowa Code chapter 137C, 137D, 137F or 196 invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

“Temporary food establishment” means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

“Transient guest” means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

“Vending machine” means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged, nonpotentially hazardous foods, panned candies, gumballs or nuts are exempt from licensing, but may be inspected by the department upon receipt of a written complaint.

481—30.3(137C,137D,137F,196) Licensing. A license to operate any of the above must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; location of buildings; or other data relative to the license requested. Applications are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

30.3(1) A license is not transferable. Licenses are not refundable unless the license is surrendered to the department prior to the effective date of the license.

30.3(2) A license is renewable and expires after one year.

30.3(3) A valid license shall be posted no higher than eye level where the public can see it. Vending machines shall bear a tag to affirm the license.

***30.3(4)** Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license. A farmers market potentially hazardous food license may be used in the same county at different individual locations without obtaining a new license. Multiple locations operated simultaneously each require a separate license. Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

30.3(5) The regulatory authority may require documentation from a license holder of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing establishment. The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. Documentation shall include at least one of the following:

- a. A copy of the firm's business tax return;
- b. Quarterly sales tax data;
- c. A letter from an independent tax preparer;
- d. Other appropriate records.

This rule is intended to implement Iowa Code sections 10A.502(2), 137C.8, 137D.2 and 137F.4 to 137F.6 as amended by 2002 Iowa Acts, House File 2620.

481—30.4(137C,137D,196) License fees. The license fee is the same for an initial license and a renewal license. Licenses expire one year from the date of issuance, except for temporary food establishments. Applications for licenses are available from the Department of Inspections and Appeals, Inspections Division, Lucas State Office Building, Des Moines, Iowa 50319-0083; or from a contracting local health department. License fees are set by the Iowa Code sections listed below and charged as follows:

30.4(1) Retail food establishments are based on annual gross sales of food or food products to consumer customers intended for preparation or consumption off the premises (Iowa Code section 137F.6) as follows:

- a. For annual gross sales of less than \$10,000—\$30;
- b. For annual gross sales of \$10,000 to \$250,000—\$75;
- c. For annual gross sales of \$250,000 to \$500,000—\$115;
- d. For annual gross sales of \$500,000 to \$750,000—\$150;
- e. For annual gross sales of \$750,000 or more—\$225.

30.4(2) Food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6) or subject to Iowa sales tax as provided in Iowa Code section 422.45 as follows:

- a. For annual gross sales of less than \$50,000—\$50;
- b. For annual gross sales of \$50,000 to \$100,000—\$85;
- c. For annual gross sales of \$100,000 to \$250,000—\$175;
- d. For annual gross sales of \$250,000 to \$500,000—\$200;
- e. For annual gross sales of \$500,000 or more—\$225.

*Objection imposed by the Administrative Rules Review Committee at its meeting held September 10, 2002; objection filed September 23, 2002. See text of Objection at the end of this chapter.

30.4(3) Food and beverage vending machines, \$20 for the first machine and \$5 for each additional machine (Iowa Code section 137F.6).

30.4(4) Home food establishments, \$25 (Iowa Code section 137D.2(1)).

30.4(5) Hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

- a. For 1 to 15 guest rooms—\$20;
- b. For 16 to 30 guest rooms—\$30;
- c. For 31 to 75 guest rooms—\$40;
- d. For 76 to 149 guest rooms—\$50;
- e. For 150 or more guest rooms—\$75.

30.4(6) Mobile food unit or pushcart, \$20 (Iowa Code section 137F.6).

30.4(7) Temporary food service establishments issued for up to 14 consecutive days in conjunction with a single event or celebration, \$25 (Iowa Code section 137F.6).

A temporary food establishment license for a temporary food establishment located in a farmers market is valid at that site until December 31, 2001, provided the food establishment does not operate more than 14 consecutive days at this location. This paragraph will expire as of January 1, 2002.

30.4(8) For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or warehouse (Iowa Code section 137F.6) as follows:

- a. Annual gross sales of less than \$50,000—\$50;
- b. Annual gross sales of \$50,000 to \$250,000—\$100;
- c. Annual gross sales of \$250,000 to \$500,000—\$150;
- d. Annual gross sales of \$500,000 or more—\$250.

30.4(9) Egg handlers are based on the total number of cases of eggs purchased or handled during the month of April (Iowa Code section 196.3) as follows:

- a. For less than 125 cases—\$15;
- b. For 125 to 249 cases—\$35;
- c. For 250 to 999 cases—\$50;
- d. For 1,000 to 4,999 cases—\$100;
- e. For 5,000 to 9,999 cases—\$175;
- f. For 10,000 or more cases—\$250.

For the purpose of determining fees, each case shall be 30 dozen eggs.

***30.4(10)** Pursuant to 2002 Iowa Acts, House File 2620, section 2, a person selling potentially hazardous food at a farmers market must pay an annual license fee of \$100 for each county of operation. Persons who operate simultaneously at more than one location within a county are required to have a separate license for each location.

481—30.5(137F) Penalty and delinquent fees.

30.5(1) Food establishment licenses and food processing plant licenses that are renewed by the licensee after the license expiration date shall be subject to a penalty of 10 percent of the license fee per month.

30.5(2) A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

30.5(3) A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of \$100 for each violation. Prior to the assessment of any civil penalties, a hearing conducted by the appeals division in the department of inspections and appeals must be provided as required in rule 481—30.13(10A).

This rule is intended to implement Iowa Code sections 137F.4, 137F.9 and 137F.17.

*Objection imposed by the Administrative Rules Review Committee at its meeting held September 10, 2002; objection filed September 23, 2002. See text of Objection at the end of this chapter.

481—30.6(137C,137D,137F,196) Returned checks. If a check intended to pay for any license provided for under Iowa Code chapters 137C, 137D, 137F or 196, is not honored for payment by the bank on which it is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, the establishment will be operating without a valid license.

481—30.7(137F) Double licenses.

30.7(1) Any establishment which holds a food service establishment license and has gross sales over \$20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license.

The license holder shall keep a record of these food sales and make it available to the department upon request.

30.7(2) A retail food establishment and a food service establishment which occupy the same premises must be licensed separately and the applicable fees paid. The license fee for each is based on only the annual gross sales of food and drink covered under the scope of that particular type of license.

30.7(3) A food establishment that is licensed both with a food service establishment license and a retail food establishment license shall pay 75 percent of the license fees required in subrules 30.4(1) and 30.4(2).

30.7(4) Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

30.7(5) A temporary food establishment license is not required when the temporary food establishment is owned and operated on the premises of a licensed food establishment.

30.7(6) The dominant form of business in annual gross sales shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and a food processing plant. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. Food establishments that process low-acid food in hermetically sealed containers or process acidified foods are required to have a food processing plant license.

30.7(7) A licensed mobile food unit that operates as a licensed mobile food unit at a farmers market is not required to obtain a separate farmers market potentially hazardous food license.

This rule is intended to implement Iowa Code sections 10A.502 and 137F.6 as amended by 2002 Iowa Acts, House File 2620.

481—30.8(137C,137D,137F) Inspection frequency.

30.8(1) Food establishments shall be inspected at an interval specified in Section 8-401.10 of the Food Code Recommendations of the Food and Drug Administration. Food service operations in schools, summer camps, assisted living facilities, residential service substance abuse treatment facilities, halfway house substance abuse treatment facilities, correctional facilities operated by the department of corrections, the state training school, and the Iowa juvenile home shall be inspected at least once annually.

30.8(2) Food processing plants shall be inspected at least annually.

30.8(3) Hotels shall be inspected at least once biennially.

30.8(4) Home food establishments and vending machine license holders shall be inspected at least once annually.

30.8(5) Egg handlers shall be inspected at least once annually.

30.8(6) Farmers market potentially hazardous food licensees shall be inspected at least annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, 137F.2 and 196.2.

481—30.9(137D,137F,196) Disposal standards. Standards in the 1984 edition of the “Model Food Salvage Code” are used to regulate the disposal of salvaged or distressed merchandise. A copy is available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

481—30.10(137C,137D,137F) Local contracts. The department may contract with municipal corporations to inspect and collect license fees from any establishment covered by these rules. Inspections shall be pursuant to 481—Chapters 30, 31 and 37. A list of contracts is available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

This rule is intended to implement Iowa Code section 137F.3.

481—30.11(22) Examination of records. Information collected by the inspections division is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director.

481—30.12(137C,137D,137F,196) Denial, suspension or revocation of a license to operate. Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

481—30.13(10A) Formal hearing. All decisions of the bureau may be contested by an adversely affected party. Request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, “Contested Case Hearings.”

30.13(1) The proposed decision of the administrative law judge becomes final 30 days after it is mailed.

30.13(2) Any request for administrative review of a proposed decision must:

- a.* Be made in writing;
- b.* Be filed with the director of the department of inspections and appeals within 30 days after the proposed decision was mailed to the aggrieved party (date of receipt by personal service or the post-marked date is time of filing);
- c.* State the reason(s) for the request.

30.13(3) The decision of the director shall be based upon the record and becomes final agency action upon mailing.

481—30.14(137D,137F,196) False label or defacement. No person shall use any label required by Iowa Code chapter 137C, 137F or 196 which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by these chapters.

This rule is intended to implement Iowa Code section 137F.3.

These rules are intended to implement Iowa Code sections 10A.104, 10A.502 and 22.11 and Iowa Code chapters 137C, 137D, 137F as amended by 2002 Iowa Acts, House File 2620, and 196.

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OBJECTION

At its September 10, 2002, meeting the Administrative Rules Review Committee voted to object to the provisions of ARC 1760B, items three and four, on the grounds those items exceed the authority of the Department of Inspections and Appeals. The committee also objects to the “emergency” adoption and implementation of these provisions. Committee members felt that a notice of intended action would have provided an opportunity to discuss and resolve these issues before the licensing provisions were implemented.

These provisions implement 2002 Iowa Acts, House File 2620, creating a special license for vendors at farmers markets. Section two of the Act states:

For a farmers market where potentially hazardous food is sold or distributed, one seasonal license fee of one hundred dollars for each vendor on a countywide basis.

It is the opinion of the committee this provision means that a vendor may simultaneously operate a number of stands at a number of locations within a single county for a single fee. Members felt the phrase “countywide basis” evidenced a legislative intent that the vendor could operate anywhere within that county at any time. The interpretation set out in ARC 1760B would require a separate license for each separate farmers market where the vendor simultaneously operates.

This action is taken pursuant to the authority of Iowa Code §17A.4. The effect of this objection is to terminate the emergency filing 180 days after this objection is filed.

Objection filed September 23, 2002.